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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

SHERR-UNA BOOKER, an individual,
Plaintiff,

v.

C.R. BARD, INC., a New Jersey
corporation and BARD PERIPHERAL
VASCULAR, an Arizona corporation,
Defendants.

**PLAINTIFF'S MOTION IN LIMINE #14
AND MEMORANDUM IN SUPPORT
TO EXCLUDE EVIDENCE OF
PERSONAL TRAITS OF BARD'S
CURRENT AND FORMER
EMPLOYEES AND WITNESSES**

(The Honorable David G. Campbell)

(Oral Argument Requested)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE OF PERSONAL TRAITS OF BARD'S CURRENT AND
FORMER EMPLOYEES AND WITNESSES**

Plaintiff seeks a pretrial ruling to preclude Defendants from commenting on, referring to, introducing argument or evidence at trial relating to the religion, religious beliefs, religious activities, church membership, church affiliation, socioeconomic status, marital status, parental relationships, family health status, and children of Defendants' current and former employees and other witnesses.

MEMORANDUM OF LAW

Bard has repeatedly attempted to bolster the credibility of their witnesses by eliciting irrelevant testimony regarding the religious affiliations and family circumstances of its current and former employees. For example, sales representative Patrick McDonald testified to the following in response to Bard's counsel's questions: that he and his wife just celebrated their ten-year anniversary; that he has two children who "go to Christ Church School right here next to us and now it's Christ Church Camp because we're in the summer"; that he is Roman Catholic and is a member of St. John's Church, where his parents and in-laws also go; that he recently celebrated his "son's first Holy Communion"; and that his family is "an active part of" his church. Exhibit A, Deposition of Patrick McDonald, July 29, 2016, at 180:8-23. Bard has elicited similar testimony from Mr. McDonald's prior supervisor who was involved district sales on a national level (Daniel Orms) and from another one of its former sales manager (Jack Sullivan). Exhibit B, Deposition of Daniel Orms, August 16, 2016, at 264:8-17; Exhibit C, Deposition of Jack Sullivan, September 16, 2016, at 394:20-395:18.

Another example of this unfairly prejudicial and irrelevant testimony transpired at the deposition of Guillermo "Bill" Altonaga, Bard's former Medical Director. Dr. Altonaga testified: "I came from a family that wasn't highly educated. My father and mother were not educated folks. They came from Cuba. And I really wasn't aware of all the options and how to go and pursue that type of education, and I thought that this was a way that was more feasible for me to do." He further testified "I didn't have a lot of guidance. I didn't have parents that said this is where you go to school, this is how it's going to be, you do your undergraduate, you go to graduate school. You know, so I had to fend for myself and figure out what I wanted to do." Exhibit D, Deposition of Bill Altonaga, October 22, 2013 at 15:13-18, and 18:9-13.

Such evidence is irrelevant to the issues involved in this case, has the potential to improperly invoke the sympathy of the jury or create a potential bias, is unduly

1 prejudicial, and inadmissible. It bears a substantial risk of influencing the jury to reach
 2 conclusions on an improper basis; this risk far outweighs any possible relevance of
 3 conveying to jurors Bard's employees' ethnicities, nationalities, religious tendencies,
 4 marital status, preference to procreate, socioeconomic status, or lack of resources or
 5 guidance experienced during childhood.

6 Accordingly, the Court should grant Plaintiff's motion and enter an Order barring
 7 any argument, testimony, or evidence regarding the religion, religious beliefs, religious
 8 activities, church membership, church affiliation, marital status, socioeconomic status,
 9 family health status, parental relationships, or children of Defendants' current and former
 10 employees and other witnesses.

11 RESPECTFULLY SUBMITTED this 26th day of January, 2018.

12 GALLAGHER & KENNEDY, P.A.

13 By: /s/ Mark S. O'Connor
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23 CERTIFICATE OF SERVICE

24 I hereby certify that on this 26th day of January, 2018, I electronically transmitted
 25 the attached document to the Clerk's Office using the CM/ECF System for filing and
 26 transmittal of a Notice of Electronic Filing.

27 /s/ Gay Mennuti
 28